

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

NEW WEST CHARTER MIDDLE
SCHOOL and CALIFORNIA
DEPARTMENT OF EDUCATION,

Respondent.

OAH CASE NO. N2006110405

**ORDER GRANTING MOTION
FOR STAY PUT**

On November 14, 2006, the Office of Administrative Hearings (OAH) received a due process hearing request from Valerie Vanaman of Newman Aaronson Vanaman, attorney for Petitioner (Student) naming New West Charter Middle School (New West) as Respondent. Student's Motion for Stay Put was also filed on November 14, 2006. Student requested New West to be his stay put placement.

On December 5, 2006, OAH received New West's Opposition to Petitioner's Motion for Stay Put from attorney Christopher Knauf. New West contends that the motion should be denied and the November 4, 2005, IEP, which provided for placement in a general education classroom within the Los Angeles Unified School District with appropriate supports and services, should be Student's stay put placement. District contends that this IEP is the last agreed-upon and implemented IEP. On December 8, 2006, OAH received Students Reply Memorandum to New West's Opposition. On December 11, 2006, OAH received New West's Response to Petitioner's Reply Brief re: Motion for Stay Put.

APPLICABLE LAW

Under federal and State special education law, a special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); Cal. Educ. Code §§ 56505(d), 48915.5.) The purpose of stay put is to maintain the status quo of the student's educational program pending resolution of the due process hearing. (*Stacey G. v. Pasadena Independent Sch. Dist.*, 695 F.2d 949, 953 (5th Cir. 1983); *Zvi D. v. Gordon Ambach*, 694

F.2d 904 (2d Cir. 1982).) For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Board of Education* (6th Cir. 1990) 918 F.2d 618, 625.) In *Honig v. Doe* (1988) 484 U.S. 305, the United States Supreme Court affirmed that the right to stay put is “unequivocal.”

20 U.S.C. section 1414, subdivision (d)(2)(C)(i)(1), which became effective on July 1, 2005, provides for an interim placement for special education students who transfer to a new school district within the same state. That section provides as follows:

In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

California Education Code section 56325(a)(1), which went into effect on October 7, 2005, similarly addresses the situation in which a child transfers from one school district to another school district which is part of a different SELPA. Section 56325(a)(1) mirrors the section 1414(d)(2)(C)(i)(1), with the additional provision that, for a student who transfers into a district not operating under the same special education local plan area (SELPA), the LEA shall provide the interim program “in consultation with the parents, *for a period not to exceed 30 days*, by which time the local educational agency shall adopt the previously approved [IEP] or shall develop, adopt, and implement a new [IEP] that is consistent with federal and state law.” [Emphasis added.]

The new district’s obligation to provide stay put when a student transfers into a new school district and parent files a due process complaint challenging the services offered by the new school district. That issue is addressed in *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, at pages 1133-1134 (9th Cir.2003):

We have held that to keep a student in the ‘then current educational placement,’ a district typically has the obligation to provide the ‘placement described in the child’s most recently implemented IEP.’ [citing *Johnson ex rel. Johnson v. Special Educ. Hearing Off.*, 287 F.3d 1176, age page 1180 (9th Cir. 2002)] This obligation, however, is not absolute. We have held that when a student falls under the responsibility of a different educational agency- - for example, when a student becomes old enough to receive services from a school district rather than a preschool school provider- - the new agency need not provide a placement identical to that provided by the old agency. *Johnson*, 287 F.3d at 1182-1183. Although the ‘stay put’ provision is meant to preserve

the status quo, we recognize that when a student transfers educational jurisdictions, the status quo no longer exists. *Id.*

The OSEP has stated that when a student transfers to a new district, and there is disagreement on appropriate placement, the new district must implement the last agreed-upon IEP ‘to the extent possible.’ [citing OSEP letter] ‘To the extent implementation of the old IEP is impossible, the new district must provide services that approximate, as closely as possible, the old IEP.’ *Id.* We defer to and adopt the position of the OSEP in the [letter] because the OSEP is the agency responsible for monitoring and administering the IDEA and because the [letter] comports with the purposes of the IDEA. [citation omitted] We hold that when a dispute arises under the IDEA involving a transfer student, and there is disagreement between the parent and the student’s new school district about the most appropriate educational placement, the new district will satisfy the IDEA if it implements the student’s last agreed-upon IEP; but if it is not possible for the new district to implement in full the student’s last agreed-upon IEP, the new district must adopt a plan that approximates the student’s old IEP as closely as possible. The plan thus adopted will serve the student until the dispute between the parent and school district is resolved by agreement or by administrative hearing with due process.

California Education Code sections 47640, et seq. provide that a charter school may serve independently as a local education agency (LEA) and must provide special education services as would any public school.

DISCUSSION

Student was accepted by the lottery system into New West. The parties do not dispute that New West is chartered by the California Department of Education and is a LEA. The parties do not dispute that the last agreed upon and implemented IEP was the November 4, 2005, IEP, which provided for placement in a general education classroom within the Los Angeles Unified School District with specified appropriate supports and services. IEP team meetings held subsequently, including a 30-day interim IEP on September 27, 2006, did not result in an agreed upon middle school placement for Student. Student contends that New West should be required to implement the provisions of the November 4, 2005, IEP at New West. New West contends that New West, as a charter school, does not offer general education classrooms as specified in the last agreed upon IEP and therefore it does not meet the requirements of the November 4, 2005, IEP.

While section 1414(d)(2)(C)(i)(1) and section 56325(a)(1) and *Vashon Island* describe the obligations of school districts into which special education students transfer, they do not explicitly address the obligations of a charter school, which serves as an independent LEA, into which a special education student transfers. There does not appear to

be any law specifically addressing that issue, but it is analogous to a district to district transfer

New West is the student's current educational placement. New West has not claimed it would be impossible to implement the November 4, 2005, IEP at New West. Student is entitled to remain in his current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise.

ORDER

Student's motion for stay put is granted. Student's stay put placement shall be at New West and New West shall as closely as possible provide the services and supports specified in the November 4, 2005, IEP.

Dated: December 13, 2006

SHERIANNE LABA
Administrative Law Judge
Special Education Division
Office of Administrative Hearings